No. 05-

In the
**SUPREME COURT of the UNITED STATES**

Jeremiah Lee Irwin
Petitioner,

vs.

Commonwealth of Pennsylvania
Respondent,

---

On Petition for Allowance of Appeal
to the Supreme Court of the Commonwealth of Pennsylvania

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# PETITION FOR WRIT OF CERTIORARI

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Dated September 8, 2005

## QUESTIONS PRESENTED

The Sixth Amendment of the United States Constitution guarantees that, "in all criminal prosecutions, the accused shall enjoy the right to a speedy...trial...

The Pennsylvania legislature has determined, as set forth in Pa. Rule of Criminal Procedure 600, that a defendant will be brought to trial within 365 days of the date of the complaint. The questions presented in this case are:

(1) Whether the holding by the Pennsylvania Superior Court infringed upon the constitutionally protected right of the petitioner by overturning the trial court which dismissed the complaint due to the Commonwealth's failure to bring the petitioner to trial within the 365 days?

(2) Whether the Pennsylvania Superior Court abused its discretion by rendering a decision in conflict with this Honorable Court's holdings on the same issue, thus creating an ambiguity in Pennsylvania on the interpretation of the 6th Amendment of the Constitution and Rule 600 of the Pennsylvania Rules of Criminal Procedure?

## PARTIES TO THE PROCEEDINGS BELOW

Appellant in the petition to the Pennsylvania Supreme Court was petitioner, Jeremiah Irwin. Mr. Irwin was also the Appellee in the Pennsylvania Superior Court matter and the defendant in the court of common pleas proceedings. In addition to Mr. Irwin, there were three other co-defendants, Keith Wayne Keefer, Carrie L. Kline-Bettner and Jessica Minard. The Commonwealth for purposes of trial consolidated all four of the cases. In addition, the other three original defendants filed petitions to the Pennsylvania Supreme court and said petitions were also denied.

Appellee in the petition to the Pennsylvania Supreme Court was the Commonwealth of Pennsylvania. The Commonwealth of Pennsylvania was the appellant in the matter before the Pennsylvania Superior Court.

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In the

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## PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of Pennsylvania.

## OPINIONS BELOW

The Supreme Court of Pennsylvania, by denying the petition for allowance of appeal, did not issue an opinion in this matter. The opinion of the Superior Court of Pennsylvania is a non-precedential decision, and, therefore, was not reported. The opinion of the Court of Common Pleas of Warren County is also unreported. A true and correct copy of the opinion of the Supreme Court is attached hereto, incorporated by reference, and referred to hereinafter as "Appendix A". The opinion of the Superior Court is attached hereto, incorporated by reference, and referred to hereinafter as "Appendix B". The opinion of the Honorable William Morgan of the Court of Common Pleas of Warren County, Pennsylvania, Criminal Division is attached hereto, incorporated

by reference and referred to hereinafter as "Appendix C".

## JURISDICTION

The Pennsylvania Supreme Court, the court of last resort in the Commonwealth, issued it decision on June 10, 2005. This Honorable Court has jurisdiction to hear this petition pursuant to U.S.C.A. Const. Art. III § 2 and 28 U.S.C. § 2101(c).

## STATUTORY PROVISIONS INVOLVED

This case involves the 6th Amendment of the United States Constitution and Rule 600 of the Pennsylvania Rules of Criminal Procedure.

6th Amendment provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense"

Rule 600 of the Pennsylvania Rules of Criminal Procedure provides as follows:

"trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later the 365 days from the date on which the complaint is filed". .

## STATEMENT OF THE CASE

On May 28, 2002, twenty-seven criminal complaints were filed against the Petitioner, Jeremiah Lee Irwin, charging numerous counts of burglary, theft, criminal trespass, receiving stolen property and criminal mischief. In addition, related charges were filed against 3 other co-defendants. Petitioner, Irwin was represented by the public defender's office and a preliminary

hearing was scheduled for December 4, 2002. At that time, one of the codefendants, Jessica Ann Minard, was not represented and the matter was rescheduled until January 27, 2003. While the crimes were alleged to have taken place in Warren County, the victims resided in another jurisdiction and it was the desire of the Commonwealth to keep all of the cases together so that the victims would not be inconvenienced. Therefore, at that time and over objections by Petitioner, the Commonwealth requested a continuance and the matter was rescheduled for March 19, 2003. At that time, the matter was heard and held over for court.

In order to progress this matter, the Petitioner, along with the other defendants, filed a waiver of arraignment on April 4, 2003 and the Commonwealth filed a motion to consolidate this case with that of the other co-defendants. The motion was granted on May 27, 2003. Petitioner filed a motion to dismiss on May 29, 2003. All other defendants filed similar motions based on the Commonwealth's failure to bring the defendant to trial within 365 days under Pa.R.Crim.P. 600 and the 6th Amendment of the United States Constitution. At the argument for the motion, the Commonwealth acknowledged that it was aware of a potential Rule 600 problem as early as January 17, 2003 and failed to present any evidence that would suggest that it took any steps from that point on to expedite the trial of this case or, in the alternative, seek relief from the local rules regarding trial scheduling in order to comply with the provisions of Rule 600. and the 6th Amendment. Accordingly, the Motion to Dismiss was granted on June 27, 2003 due to the failure of the Commonwealth to exercise due diligence in the prosecution of this matter.[1]

In the opinion of the Honorable William Morgan, he

**(Footnotes)**

[1] The only excusable delay, according to the Superior Court, was that delay caused or connected to the minor judiciary at the preliminary hearing stage or the Court of Common Pleas and its local rules regarding trial scheduling. The delay caused by the police investigation as not excused by the Superior Court and thus, this argument will address only the excusable delay.

indicated that the mechanical run date for 6th amendment purposes was 365 days from the filing of the complaint, or May 28, 2003. The time delay that resulted from the District Justice continuing the case was attributed to the Commonwealth, as was the time period from formal arraignment to the trial. The trial court pointed out that the Commonwealth did nothing to expedite the trial of this matter, in terms of seeking relief from the local rules, which prescribe the time from arraignment to trial and that the Commonwealth was in violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure. This well-established rule provides that the Commonwealth has the burden of bringing the matter to trial within 365 days from the filing of the complaint. The trial court heard the testimony of all the individuals involved in the matter including the district magistrate, the office manager of the district attorney's office and the assistant district attorney in charge of the prosecution of this case. The trial court based its findings on the simple fact that the Commonwealth as aware of a Rule 600/6th Amendment problem early on in the prosecution due to the inexcusable delay prior to the preliminary hearing by the investigating police force. The rule does provide that certain time periods are excluded such as any time wherein the defendant has requested a continuance, been unavailable or waived his right to a speedy trial. In this matter, the trial court found that none of the exclusions applied. The Commonwealth sat on its hands and allowed the process to wash over them. They realized early on that they were facing a Speedy Trial/ Rule 600 issue and instead of petitioning the court for relief from the local rule, they did nothing and allowed the matter to be dismissed.

The Commonwealth took an appeal and the Honorable Superior Court heard the matter on September 15, 2004 and the court issued its opinion on January 21, 2005.

In that opinion, the Superior Court held that the delays occasioned by the District Justice and compliance with the local rules of Warren County could not be held against the

Commonwealth as these items were outside of the control of the prosecution, and thus reversed the decision of the trial court and remanded the matter.

The defendants filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Said petition was denied, without hearing, on June 10, 2005.

**REASONS FOR GRANTING THE WRIT**

Whether the denial of the petition for appeal by the Pennsylvania Supreme Court and the reversal of the Court of Common Pleas by the Pennsylvania Superior Court conflicts with the intent and clear language of the 6th amendment and the court's holding in *Barker v. Wingo*

Answer: Yes

In its decision, the Honorable Pennsylvania Superior Court has chosen to create its own interpretation of the 6th amendment and this court's holding in *Barker v. Wingo*. 407 US 514 (1972)

In its decision, the Pennsylvania Superior Court determined that the delays, which were necessitated by the Commonwealth, District magistrate's office and the local rules of Warren County, were "excusable delays" and could not be held against the Commonwealth for a speedy trial application. Such a decision flies in the face of this court's holding in Baker and its' prodigies.

As this court is aware, the leading case on the Speedy Trial Clause of the 6th amendment is *Barker, supra*. Barker spells out a 4-prong test to evaluate a claim under the 6th amendment. Such an inquiry consists of whether the delay was uncommonly long, whether the government is more to blame for the delay, whether the defendant has asserted his right to a speedy trial and finally, whether he has suffered prejudice as a result of the delay.

While each of the individual elements must be meet, the entire test must be viewed on the whole *United States v. Doggert*, 505 U.S. 647 (1992). Thus, a single element has no greater weight then the entirety of the issue.

The first factor in addressing the issue of a 6th amendment violation is the length of the delay. In the matter at bar, the first criminal complaint was filed on May 28, 2002. This made the mechanical run date May 28, 2003. The case was scheduled for trial to begin on July 14, 2003, thus creating a delay from the date charges were filed until the date of trial of 58 weeks.

Through a number of delays, none of which were the result of actions by any of the defendants, the matter was first listed for trial to begin on July 14, 2003. This was 406 days from the initial filing of the complaint. This amounts to a delay of over 12 months. Although the defendant was not incarcerated, there was a significant restriction on his freedom as he was released on bond pending trial. This honorable court has held that a delay of 18 months to an individual who was released on bail was," quite significant" and thus a violation of his right to a speedy trial. *United States v. $8550*, 461 U.S. 555 (1983). Therefore the delay of 406 days must give rise to a careful examination of the remaining facts and elements of *Barker* to determine if the criteria has been met.

The second factor that was articulated in *Barker* was the cause for the delay. The lower court opinion is quite clear in its detailed timetable of delay. From the initial delay by the investigating officer, to the delay on the part of the District Justice in continuing the preliminary hearing on her own motion, to the assistant district attorney who insisted that the preliminary hearings be consolidated to avoid any "inconvenience" to the victims, to the district attorney who failed to even attempt to seek relief from the local rules in order to prosecute this matter in a timely fashion. At no time, was there any delay occasioned by the actins or inactions of the defendants. As a result, it defies logic how the Pennsylvania courts could deny an individual his constitutionally protected right when he had no involvement in the delay.

The next factor is the defendant's assertion of his rights to a speedy trial. While there is no record of the defendant filing any motion with that court, or making any affirmative assertion of his

desire to be tried under the 6th amendment, the lack of consent to the prolonging of this matter must be given attention and credibility. At no time did any of the defendants indicate their approval or consent to any of the continuances or postponements. Almost without exception, in order for a person to waive a constitutionally protected right, there must be some affirmative action.*Schneckloth v. Bustamonte* 412 U.S. 218 (1973).

In *Schneckloth*, the defendant was the subject of a search that was alleged by the police to be consensual. The court held that in order to justify consent to a non custodial search, the state must demonstrate the voluntary nature of the consent. The majority of the court held that before the waiver of a constitutionally protected right could be established, there must be an "intentional relinquishment or abandonment "of the right. In this matter presently before the court, there is no such evidence. Further to suggest that the accused failure to assert a right serves as an automatic waiver is absurd. *Id* at 236.

Mr. Justice Brennen pointed out in the dissenting opinion that the Court must always "scrutinize with great care claims that a person has foregone the opportunity to assert constitutional rights" *Id* at 278.

The effectiveness of any such waiver is based on its knowing, intelligent and voluntary nature. To rely on the fact that the defendant did nothing to show that he wanted to maintain his constitutional right to a speedy trial is to say that a criminal defendant must state to the authorities that he wishes to remain silent, and that would require him to indicated in some formal manner that he in fact, does want to retain his 5th amendment rights. However, the reality of the situation is that the defendant needs only to make an affirmative action if he wishes to relinquish his rights. If he wants to retain what Framers Jefferson and Madison gave him, he needs do nothing. That argument must apply to any waiver of a constitutionally protected right, such as the 6th amendment in this matter. Thus, the defendant's inactions serve to

demonstrate their desire to resolve this matter and bring this case to a final conclusion pursuant to the constitution.

The fourth and final element is the most difficult one to show. It is near impossible to show that one has been prejudiced in a matter where the triggering event never took place. Affirmative demonstration of prejudice is not required.*Moore v. Arizona* 414 U.S. 25 (1978). In *Moore*, the court restated it position in *Barker*, which indicated that any prejudice is not limited to possible prejudiced, but went on to indicate that disruption of the accused's life while awaiting trial.*Id* at 27.

In this case, all of the defendants were released on bail. Although, they were free on bail and not restricted by incarceration, there was still a substantial curtailment upon their liberty and thus a substantial prejudice to them. This court has held that any restriction on liberty is serious and must be addressed within the confines of a speedy trial issue *US v. Loud Hawk*, 474 U.S. 302 (1986)

Whether this case raises fundamental issues that could have a chilling effect on the 6th amendment rights of any individual charged with a crime in Pennsylvania by placing the administrative convenience and needs to the victim and the prosecution at the expense of constitutional protections

Answer: Yes

The Commonwealth was overly concerned with making the prosecution of this matter convenient to the victims, at the constitutional expense of the defendants. Such administrative convenience cannot over take the constitutional protections of the 6th amendment.

The record was clear that a large block of time was squandered away by the Commonwealth through the actions of the assistant district attorney attempting to consolidate all of the preliminary hearings of each of the 4 defendants for the sole purpose of creating convenience for both the prosecution and the victims, since the victims had to travel a substantial distance to attend the

proceedings.

This court has stated that the Bill of Rights was designed to protect the citizens from the very efficiency and convince that, while making a politician look good, also serves to erode the constitutional protections. *Stanley v.Illinois*, 405 US 645 (1972).

In *Stanley*, the court dealt with the issue of child dependency and the need by the state to act in an effective and efficient manner. The court held that the constitution recognizes higher values then speed and efficiency and the concern for such matters is one of the items that the constitution protects its citizens from.*Id* at *656*.

To allow administrative convenience to rule the day is to place a document as sacred as the constitution on the same level as a procedural handbook; something to look at for guidance, but not controlling. The court held long ago that when the reading and interpretation of the constitution are at stake, the "tiresome, but never the less vital" task is required. *Reid v. Covert*,*354* U.S.1 (1957).

Perhaps it was best restated by Mr. Justice Stevens in the dissent in *Reno v. Floes*, 507 U.S. 292, 345 (1993) citing *Stanley that*," administrative inconvenience is a thoroughly inadequate basis for the deprivation of core constitutional rights". That is exactly what we have here. The Commonwealth, in an exercise of efficiency and convenience, went the extra mile to please the victims and district attorney. However, this was done at an incredibly high cost: the constitutional protections of the 6th amendment afforded the defendants in this action.

Petitioner submits that the panel of the Superior Court that considered this case misapplied the Speedy Trial Clause of the 6th amendment. In addition, the PA Supreme Court failed to address the issue, thus resulting in inconsistency and confusion on the speedy trial issue in Pennsylvania.

## CONCLUSION

For the above stated reasons, the Petitioner, and the co defendants, respectfully requests that this Honorable Court grant the Writ of Certiorari.

Respectfully submitted,

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# APPENDIXES TO THE PETITION FOR WRIT OF CERTIORARI

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Dated: September 8, 2005

**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA
No. 62 WAL 2005
Respondent
Petition for Allowance of Appeal
from the Order of the Superior Court
V.
JEREMIAH LEE IRWIN
Petitioner

**ORDER**

**PER CURIAM**

**AND NOW**, this 10th day of June 2005, the Petition for Allowance of Appeal is hereby **DENIED**.

A True Copy John A. Vaskov
As of: June 10, 2005
Attest:
Deputy Prothonotary
Supreme Court of Pennsylvania

**Appendix A**

NON-PRECEDENTIAL DECISION
SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,
Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

KEITH WAYNE KEEFER,
Appellee
No. 1670 WDA 2003

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 145 of 2003.

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 1672 WDA 2003
Appellant

v.

CARRIE L. KLINE-BETTNER,
Appellee

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 200 of 2003.

**Appendix B**

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 1673 WDA-2003

v.

JESSICA A. MINEARD,
Appellee

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 199 of 2003.

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF
PENNSYLVANIA
No. 1674 WDA 2003
Appellant

v.

JEREMIAH LEE IRWIN,
Appellee

**Appeal from the Order of June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 118 of 2003.**

**BEFORE: JOYCE, BENDER AND BOWES, JJ.**

**MEMORANDUM: FILED: January 21, 2005**

In these appeals, the Commonwealth contends that the trial court erroneously concluded that it had violated the dictates of Pa.R.Crim.P. 600. We find merit in that position, reverse, and remand.[1] The criminal complaints were filed in these matters on May 28, 2002; six defendants were involved in the charges. Keith Keefer, Jeremiah L. Irwin, Jessica Mineard, and Carrie L. Kline-Bettner (collectively Appellees) presently are involved in this appeal. The other two defendants, Aaron Anzio and David Meeder, did not file motions to dismiss based on Rule 600 at the time of the trial court's decision in these four appeals.

The charges arose out of a string of campground burglaries in the Althom area from Friday, August 17, 2001, to Sunday, August 19, 2001. The six defendants were staying at a camp in the area at that time. In the complaints, the Commonwealth alleged that the four male defendants entered the camps and committed the burglaries.. Some of the stolen goods were recovered in the possession of Ms. Kline-Bettner and Ms. Mineard, who were charged with receiving stolen property. Mr. Keefer and Mr. Irwin were charged with twenty-seven different burglaries and related offenses.

Appellees were not jailed, and the mechanical rundate for Rule 600 purposes was May 28, 2003. A preliminary hearing was scheduled for January 27, 2003, but was continued at the Commonwealth's request and over Appellees' objections. On May 27, 2003, the trial court granted a contested Commonwealth motion to consolidate the criminal actions. On June 4, 2003, seven days after the mechanical rundate had expired, the first motion to dismiss for a Rule 600 violation was filed by Mr. Keefer. Two days later, the Commonwealth filed a motion for extension of time under the rule, which was denied on June 20, 2003. On June 20,

[1] This appeal involves four separate criminal actions with different defendants; however, the cases all involve the same underlying criminal events. In addition, there was a single Rule 600 hearing for the cases, and the issues presented on appeal are the same. Thus, we will resolve all of the appeals in one adjudication.

2003, the trial court held a hearing, at which time the following facts were revealed.

Pennsylvania State Trooper Kenneth Neiswonger testified about police efforts to locate Appellees for purposes of serving the criminal complaints. On July 12, 2002, Trooper Neiswonger attempted to "contact [Appellees] by telephone and was unable to." N.T., 6/20/03, at 6. Trooper Neiswonger telephoned the Monaca Police Department and informed them that he was seeking Appellee Keefer, Appellee Irwin, and Mr. Anzio. Monaca police went to Mr. Anzio's residence on one occasion but did not find him, and nothing further was done. On November 6, 2002, Appellees' names were entered in the National Crime Information Center, a computer facility where all active warrants are stored. On November 20, 2002, Appellee Irwin was arrested by a Monaca policeman, and on November 27, 2002, Appellee Mineard was arrested. Appellee Kline-Bettner and Appellee Keefer voluntarily relinquished themselves to authorities when they appeared at a preliminary hearing which had been scheduled for all six defendants on December 4, 2002, but which did not proceed.[2] Trooper Neiswonger admittedly had addresses for all Appellees and offered no explanation for his failure to locate and serve them.

Assistant District Attorney Elizabeth A. Feronti testified that she was initially assigned the six criminal cases. She explained that there were twenty-seven different camp burglaries involved, the victims were from different counties, and each victim had his own criminal complaint. Therefore, "to bring each individual defendant on each individual complaint for each victim, there would have been well over a hundred preliminary hearings, if [the Commonwealth] would have done each one individually." Id. at 26. In the interest of judicial economy, Ms. Feronti wanted one preliminary hearing for all defendants on all twenty-seven burglaries.

[2] It is unclear who was present and what transpired at this original preliminary hearing with two exceptions. Appellee Irwin asked for a continuance either at the request of his attorney or because he was not represented, and Mr. Anzio was present but the preliminary hearing did not proceed as to him for unknown reasons.

Ms. Feronti sought to determine whether all six defendants had secured legal representation for the hearing so that she would not have to gather the twenty-seven victims as well as additional witnesses more than once. She was informed by the court administrator that the defendants all had applied for representation through the public defender's office, thereby creating conflicts. Ms. Feronti wrote to the district justice asking for a meeting among herself, the district justice, the defendants, and their counsel. Ms. Feronti suggested the appointment of stand-by counsel for the unrepresented defendants; she further requested a stipulation that the investigating officer could present the victims' testimony by means of hearsay.[3] A copy of the letter was sent to Appellees and to the public defender's office. At the time, only Mr. Irwin was represented by the public defender's office.

A conference with the district justice was held on January 23, 2003; two defense counsel were present. No stand-by counsel were appointed, but defense counsel who were present agreed to stipulate to the value of the stolen items.

On January 27, 2003, District Justice Cynthia Lindemuth presided over the preliminary hearing. The public defender's office represented Mr. Irwin and Mr. Keefer; Ms. Mineard and Ms. Kline-Bettner retained private counsel. The attorney for Mr. Keefer recognized the conflict problem inherent in his office representing two defendants and informed Ms. Feronti that he could not represent Mr. Keefer. When Ms. Feronti advised Judge Lindemuth that one of the defendants was not represented, the hearing was rescheduled over the objection of the three represented defendants. The case was rescheduled for March 19, 2003, the first date for which everyone was available. See id. at 40. At the Rule 600 hearing, the Commonwealth introduced the applications of all five defendants for representation through the public defender's office.[4]

[3] See Commonwealth v. Troop, 571 A. 2d 1084 (Pa. Super. 1990) (hearsay evidence is admissible at a preliminary hearing).

[4] It appears from the record that Mr. Meeder may not have been located.

Judge Lindemuth also testified at the Rule 600 hearing. She indicated that Appellee Irwin requested that his December 2002 preliminary hearing be rescheduled either at the request of his counsel or because he did not have counsel.[5] Judge Lindemuth confirmed that she granted the Commonwealth a continuance on January 27, 2003, based upon the public defender's withdrawal of representation of Appellee Keefer. She stated clearly that it was standard practice to grant a continuance when a defendant appeared without representation. She also verified that the preliminary hearing was rescheduled for March 19, 2003, the next available date that could accommodate the schedules of all defendants and their counsel. Id. at 96. All Appellees were bound over on all charges at that hearing.

The Commonwealth's final witness was Joyce Carnahan, the office manager for the district attorney's office responsible for scheduling. A copy of the court calendar was introduced. The Commonwealth established that when a case was entered into the system after the preliminary hearing, as required by local rule, it was scheduled for arraignment, settlement conference, call of the calendar, and jury selection. Once Appellees' preliminary hearing was held and they were bound over, it took Ms. Carnahan approximately five days to place their cases in the system. Their cases were scheduled for an April 3, 2003 arraignment, June 16, 2003 settlement conference, June 30, 2003 calendar call, and July 14, 2003 jury selection. The arraignment date was the first available arraignment date on the court calendar after March 19, 2003. From that date, the first available trial term was in July. Furthermore, June 16, 2003, was the first available settlement conference date on the court calendar after the April 3, 2003 arraignment. The court calendar established that the first settlement conference scheduled after April 3, 2003, was June 16, 2003; June 30, 2003,

[5] Since Appellee Irwin asked for a continuance on December 4, 2002 and since his preliminary hearing was rescheduled for January 27, 2002, that time should have been excluded as to him. Pa.R.Crim.P. 600 (c)(3)(a). When that fifty-four-day period is excluded for Appellee Irwin, it is unclear that no Rule 600 violation occurred as to him.

was the first scheduled criminal call on the court calendar after the June 16, 2003 conference day; and July 14, 2003 was the first scheduled criminal jury selection on the court calendar after the June 30, 2003 call. The Commonwealth introduced into evidence Warren County rule number 300, which sets forth the mandatory scheduling procedure imposed in that county and which provides for the aforementioned scheduling order.

The trial court concluded that none of this time was excludable for purposes of Pa.R.Crim.P. 600[6] and dismissed the charges. These Commonwealth appeals followed. Our standard and scope of review is limited:

Our standard of review in a Rule 600 issue is whether the trial court abused its discretion. *Commonwealth v. Matis,* 551 Pa. 220, 227, 710 A.2d 12, 15 (1998). Our scope of review when determining the propriety of the trial court is limited to the evidence in the record, the trial court's Rule 600 evidentiary hearing, and the trial court's findings. *Commonwealth v. Hill,* 558 Pa. 238, 244, 736 A.2d 578, 581 (1999) (citing *Matis,* 551 Pa. at 227, 710 A.2d at 15). We must also view the facts in the light most favorable to the prevailing party, in this case, Appellee. *Commonwealth v. Edwards,* 528 Pa. 103, 105, 595 A.2d 52, 53 (1988).*Commonwealth v. Lewis,* 804 A.2d 671, 673 (Pa.Super. 2002).

Since none of the Appellees was jailed, Pa.R.Crim.P. 600(A)(3) applies: "Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed." The mechanical run date under Rule 600 for these Appellees thus became May 28, 2003. Appellees' trial was not scheduled until July 14, 2003, six weeks after the run date.

Certain periods are excludable from the rule 600 time calculation:

> (C) In determining the period for commencement of trial, there shall be excluded there from:

[6] Until April 1, 2001, Rule 600 was numbered Pa. R. Crim. P. 1100

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from:

(a) the unavailability of the defendant or the defendant's attorney;

(b) any continuance granted at the request of the defendant or the defendant's attorney.

Pa. R.Crim. P. 600(C).

The Commonwealth first argues that certain days were excludable under Rule (C)(1), which governs the time between the filing of the complaint and the arrests, because the defendants' whereabouts were unknown and police exercised due diligence in attempting to discover their whereabouts. We cannot agree with this assertion. Rule 600 mandates that reasonable efforts be made to locate a defendant. *Commonwealth v. McDermott,* 421 A.2d 851 (Pa.Super. 1980); *Commonwealth v, Webb,* 420 A.2d 703 (Pa.Super. 1980). In these cases, Trooper Neiswonger conceded that he knew each of Appellees' addresses and yet never went to their homes. Trooper Neiswonger made one telephone call and entered Appellees' names in the computer. Local police went to the home of one defendant who is not involved in this appeal. The record establishes that no attempts were made to find these four Appellees, and therefore, we agree with the trial court's assessment that reasonable efforts to locate Appellees were not made.

Similarly, we cannot agree with the Commonwealth's contention that the period between the preliminary hearing scheduled on January 27, 2003, and the March 19, 2003 rescheduled hearing should be excluded. This position is premised upon the

Commonwealth's belief that the time period in which it attempted to resolve the problems created by the fact that all defendants sought representation through the defender's office was excludable. While this contention does have merit in relation to Appellee Keefer,[7] who was not represented, the remaining defendants were represented and ready to proceed. Excludable time is strictly defined by Rule 600 and does not permit delay caused by another defendant to be excluded. *Commonwealth v. Hill*, 558 Pa. 238, 736 A.2d 578 (1999); see also *Commonwealth v. Aaron*, 804 A.2d 39 (Pa.Super. 2002) (judicial delay is not excludable time).

The Commonwealth argues in the alternative that it exercised due diligence and that the circumstances that caused the cases to be delayed were beyond its control. This argument is an invocation of Pa.R.Crim.P. 600(G), and we agree that this case calls for application of that section of Rule 600. Pa.R.Crim.P. 600(G) provides, "If the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain."

Thus, even where, as here, there has been a violation of Rule 600, dismissal is not warranted where the Commonwealth exercised due diligence and the reasons the case was delayed were beyond its control. We recently had occasion to analyze this section in the en banc opinion in *Commonwealth v. Hunt*, 858 A.2d 1234 (Pa.Super. 2004). In that case, we delineated the difference between excludable time and excusable delay.[8] "'Excusable delay'" is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances

[7] Excludable time as to appellee Keefer is not sufficient to result in the scheduling of his trial within the rundate. However, it does reduce the amount of delay to twenty four days.

[8] While the trial court correctly concluded that there was no excludable time in this case, it did not analyze separately the excusable time at issue in this case. The court did not have the benefit of Hunt when it rendered its decision.

beyond the Commonwealth's control and despite its due diligence. Pa.R.Crim.P. 600(G)." Id. at 1241. When the trial court considers a motion to dismiss under Rule 600, it "must assess whether there is excludable and/or excusable delay." Id. (emphasis added). Thus,

"Even where a violation of Rule 600 has occurred, the motion to dismiss the charges should be denied if the Commonwealth exercised due diligence and 'the circumstances occasioning the postponement were beyond the control of the Commonwealth.' [Commonwealth v. Hill, 558 Pa. 238,] 263, 736 A.2d [578,] 591 [1999].

'Due diligence is a fact-specific concept that must be determined on a case-by-case basis.' Id. at 256, 736 A.2d at 588. 'Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. *Id.*'

Id. 1241-1242 (emphasis in original);

*see also Commonwealth v. Wentzel*, 641 A.2d 1207 (Pa.Super. 1994).

Furthermore, in determining whether a Rule 600 violation has occurred, we must consider the Rule's dual purposes, which include the protection of the accused's speedy trial rights as well as the protection of society. "[T]he administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth." Hunt, supra at 1239 (quoting Aaron, supra at 42).

> So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime. In considering these matters, courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well. Strained and illogical judicial construction adds nothing to our search for justice, but

only serves to expand the already bloated arsenal of the unscrupulous criminal determined to manipulate the system.

*Hunt, supra* at 1239 (quoting *Commonwealth v. Corbin*, 568 A.2d 635,

638-639) (Pa.Super: 1990)) (emphasis added).

Analyzing the excusable delay in the present case, we note the following. While the Commonwealth's efforts to arrest Appellees cannot be characterized as diligent, its conduct following their arrest differed significantly. First, the record establishes unequivocally that the preliminary hearing was delayed until March 19, 2003, through no fault of the Commonwealth. District Justice Lindemuth testified that it was standard practice to postpone a preliminary hearing when there was a conflict in representation, as in the present case, and the Commonwealth certainly cannot be blamed for the fact that Appellees all sought representation

through the public defender's office with only two obtaining outside counsel prior to the preliminary hearing. The record indicates the following:

Q. And could you tell us if you recall the events of that morning regarding the hearing, or the continuance thereof?

A. I had had some indication, but nothing in writing that there possibly could be a conflict prior to that day with the PD's Office, but we had nothing in writing and so we - the hearings went on as scheduled. The District Attorney's Office came to me and said we have a conflict with the PD's office, there are two from the PD's office and I think we need a continuance.

Q. Okay. Now, what is the common procedure for situations in which conflicts exists in Warren County?

A. We have always normally in the past have always granted those because if they go on at that time and the person has no attorney and it goes on and they're not represented,

which that person would not have been represented by an attorney on that date, then it is remanded back to the preliminary hearing stage by the judge because there was - the defendant was not represented.

Q. All right. So it's your normal procedure where there is a conflict to do what?

A. To continue it until they do get counsel.

N.T., 6/20/03, at 95. District Justice Lindemuth also confirmed that March 19, 2003, was the next available date. Id. at 96-97.

Thus, the preliminary hearing could not proceed as scheduled because two defendants were represented by the public defender's office. Furthermore, once the preliminary hearing was held, the exhibits submitted by the Commonwealth established unequivocally that each ensuing court date was scheduled on the next available open date on the court calendar and that the scheduling procedure was mandated by the applicable local rules.

Thus, the defendants were all either arrested or relinquished themselves to authorities in early December. The preliminary hearing was delayed by circumstances beyond the Commonwealth's control as was the trial date. This excusable delay amounted to six months, and the trial was scheduled forty-seven days after the mechanical rundate. As noted, due diligence does not require perfect vigilance but reasonable effort. Perfect diligence prior to December 2002 is not present in this case but the reasons for the delay beyond December 2002 cannot be placed at the door of the Commonwealth.

In weighing society's interests in the present case against Appellees' right to a speedy trial, the following factors are pertinent. The record herein evidences no misconduct by the Commonwealth, and no attempt to evade the mandate of Rule 600. Furthermore, there was minimal delay in the scheduling of trial-just over six weeks. We have recognized that the unavailability of a Commonwealth witness, while not excludable, can warrant an extension under Rule 600. *Commonwealth v. Corbin*, 568 A.2d

635 (Pa.Super. 1990) (where witness became unavailable for reason not within Commonwealth's control, extension of time under Rule 600 was warranted).

In *Commonwealth v. Hill, supra,* the Supreme Court analyzed two separate Rule 600 cases, and its decision involving defendant Cornell is analogous to the ones presented herein. Cornell's motion to dismiss under Rule 600 was granted over 114 days after his rundate, which is more than twice the period at issue in this case. The Court noted that there were numerous pretrial proceedings involved in the case, including the preliminary hearing, the arraignment, and the hearings to consider the defendant's pretrial motions and that the Commonwealth attended and was prepared for each of these proceedings. Even though Cornell's Rule 600 dismissal motion had been granted well beyond his Rule 600 rundate, the Supreme Court affirmed this Court's reversal of the trial court's decision to dismiss the case. It concluded that the Commonwealth was diligent in prosecuting the action based on its readiness to proceed at the scheduled hearings and the fact that the trial was delayed for reasons not under the control of the Commonwealth.

Such is the case herein. The Commonwealth was present and prepared to proceed at the preliminary hearing but could not. It scheduled this matter as soon as possible given the constraints of the court's schedule. There was a mere forty-seven day delay in the trial beyond the rundate.

We also are mindful of our Supreme Court's pronouncement in *Commonwealth v. Spence,* 534 Pa. 233, 244, 627 A.2d 1176, 1181 (1993), where the Court observed that a two-step process is used to analyze alleged violations of Rule [600] : (1) whether the delay itself was sufficiently long to be "presumptively prejudicial"; and, if so, (2) whether the delay is justified under the balancing test of *Barker v. Wingo,* 407 U.S. 514 (1972). The balancing test analyzes four factors: the length of the delay; the reason for the delay; the defendant's assertion of the right to a speedy trial; and, any prejudice to the defendant arising from the delay.

In *Spence*, the Court concluded that a three week delay past the rundate did not present a Rule 600 violation because the delay did not prejudice the defendant. Noting the judicial congestion and the need to coordinate the schedules of the four co-defendants for joint trial, the Court ruled, "the Commonwealth exercised due diligence because the circumstances occasioning the postponement were beyond the control of the Commonwealth and the judicial delay was not unreasonable." Id. at 245, 627 A.2d at 1182.

Herein, the same factors interplay. The length of the delay, fortyseven days, was not significant enough to be presumptively prejudicial.[9] Even if it were, under the Barker analysis, the delay was reasonable under its four-part test. The delay was caused by the Commonwealth's need to coordinate trial for six defendants and twenty-seven burglaries and due to the fact that it was working within the constraints of the limited judicial resources of a small county, which could not schedule criminal matters daily. Finally, Appellees fail to assert the existence of prejudice. Thus, as outlined in Spence, the Commonwealth exercised due diligence because the reason these matters were scheduled beyond the rundate were not within its control and the judicial delay was not unreasonable:

The trial court and Appellees rely heavily upon Aaron, supra. However, in that case, the trial in the matter was scheduled over three months after the mechanical rundate, and the record failed to indicate that the Commonwealth made any effort to bring the defendant to trial within the Rule 600 period.

Considering the excusable delay at issue in this case and the fact that the delays after December 2002 were not the fault of the Commonwealth, we conclude that the trial court abused its discretion in dismissing these cases.

Orders reversed. Cases remanded. Jurisdiction relinquished.

Judgment Entered:

Deputy Prothonotary DATE: January 21, 2005

[9] Appellee Keefer's trial, as seen, Supra was delayed a mere twenty four days, which was deemed a minimal delay in Spence, and did not serve as a basis for a Rule 600 dismissal, particularly in light of the judicial delay.

IN THE COURT OF COMMON PLEAS
OF THE 37th JUDICIAL DISTRICT OF PENNSYLVANIA
WARREN COUNTY BRANCH
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

Vs.
Cr. 172 of 2003
JEREMIAH LEE IRWIN

MEMORANDUM OPINION
IN RESPONSE TO CONCISE STATEMENT
OF MATTERS RAISED ON APPEAL

AND NOW, this 9th day of October, 2003, this Court having filed an Order pursuant to Pa. R.A.P. 1925(b) on August 26, 2003 directing Defendant to "file of record and serve on the trial court a concise statement of the matters complained of on the appeal" and Defendant having served the Court with a response on September 9, 2003, it is respectfully suggested that the Superior Court consider the Memorandum Opinion of this Court of June 27, 2003 in addition to this supplementary opinion.

The Superior Court's standard of review of a trial court decision on Rule 600 issues is whether or not the trial court abused its discretion and in making that determination, the Superior Court is limited to the evidence on the record of the Rule 600 evidentiary hearing and the findings of the trial court. *Comm. v. Aaron*, 804 A.2d 39 (Pa. Super 2002). In reviewing the trial court's ruling, the appellate court views the facts in a light "most favorable to the prevailing party." *Id.* at 42.

In the Commonwealth's Concise Statement of Matters Complained of on Appeal under Paragraph (B)(a) and (b), the Commonwealth refers to the period of time between the filing

of the charges in a written complaint against the Defendant and the date on which the Defendant was apprehended. The Commonwealth argues that because Trooper Neiswonger called the Monaca Police Department and because he entered the Defendant's name on the NCIC data base, the Trooper had acted with due diligence. Pennsylvania Rule of Criminal Procedure 600 is very clear in its guidelines as to the period of time to be excluded between the filing of the complaint and the apprehension.

In determining the period for commencement of trial, there shall be excluded therefrom:

1. The period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence; . . ."

Pa. R.Cr.P. 600(C)

At the Rule 600 hearing in this matter, Trooper Neiswonger admitted that he knew Defendant Irwin's address from the moment that the Complaint was first filed (Tr. at 14-15) but that he never made any attempt to look for Defendant Irwin. He also did not ask the Monaca, Pennsylvania police to look for Defendant Irwin when he talked to them in regard to Defendant Anzio. (Tr. at 23: 20) Without the Trooper conducting any search nor any inquiry in regard to this Defendant, whose address was known, except for placing his name on the NCIC list and telling the Monaca police he had a warrant, the Defendant eventually was picked up by the Monaca Police on November 20, 2002. (Tr. at 10:17) On July 12, 2002, the Trooper also attempted one telephone call to Defendant Irwin. (Tr. at 14:11-15) This Court, in its research, can locate no reported case in which the Commonwealth was held to have exercised due diligence when the Commonwealth made no attempt whatsoever to locate a defendant whose address was known except to enter the defendant into the NCIC system and inform a police department in his area of residence that a warrant was in place. In

all reported cases, the officer makes at least a minimal effort to go to the defendant's address and to make inquiries of relatives, neighbors, postal authorities or police agencies in the defendant's place of residence. Therefore, the period of time from the filing of the criminal complaint on May 28, 2002 to December 6, 2002 cannot be excluded from the computation of 365 days.

It must be noted that although the Commonwealth in its Concise Statement of Matters Complained of on Appeal, under Paragraph B(a) states that "Trooper Neiswonger attempted to locate the defendants by calling the Monaca Police Department and inquiring about the location of each defendant," the testimony does not back up the Commonwealth's assertion. In response to leading questions by the District Attorney, The Trooper stated that when he called the Monaca Police, he advised them that he was looking for "these individuals" (Tr. at 9:19) and that there were warrants out for all of the defendants and that he then made a request for the police to look for the defendants. However, on cross examination, Trooper Neiswonger admitted that he had asked the Monaca Police to go to only one of the defendant's residences, that is Defendant Anzio. Also, Trooper Neiswonger later stated that he was not sure that he had even mentioned the other defendants to the Monaca Police, but instead stated, "I believe I told them all the people that I was looking for to see if they were familiar with them, as far as I can remember," (Tr. at 21:21) and "I'm pretty sure I asked them about Mr. Irwin, Mr. Keefer. The two girls I'm not positive on." (Tr. at 22:3) After the Monaca Police had attempted to go to the Anzio residence, Trooper Neiswonger talked to them again on the phone. At the hearing, in response to a question from Elizabeth Ziegler, Esquire, attorney for Defendant Keefer, as to whether he asked the Monaca Police "to do anything further in regard to the other defendant's houses they had not gone to," he answered, "Not that I remember." (Tr. at 23:17) In examining the testimony of Trooper Neiswonger, one finds that he had only stated to the Monaca Police, that *perhaps*, he had warrants for the other defendants and that *perhaps* he had asked the Monaca Police

to look for them, but that he did not make any actual inquiries about the location of any defendant other than Defendant Anzio. A review of Trooper Neiswonger's testimony in light of the Court's obligation to view the evidence in a light most favorable to the prevailing party, dictates a finding of a lack of due diligence in the Commonwealth's actions from May 28, 2002 to December 6, 2002.

In the Commonwealth's Concise Statement of Matters Complained of on Appeal, Paragraph B(c), it is alleged that the trial court should have excluded a period from December 4, 2002 when Defendant Irwin was scheduled for his first preliminary hearing to January 27, 2003, the first continued date for his hearing. At the Rule 600 hearing, District Justice Cynthia Lindemuth testified that the continuance from December 4, was not at the request of the Defendant. According to her documents, the continuance was done on her own behalf because of the consolidation of the cases. (Tr. at 98:11-18) The delay not having been requested by the Defendant and being an action of the Court, the interim period between the two scheduled preliminary hearings is not excluded. *See Aaron*, 804 A.2d 39.

At the Rule 600 hearing, Assistant District Attorney Elizabeth Feronti testified that the first preliminary Hearing in this matter was scheduled for January 27, 2003 (Tr. at 36:18). (This was the consolidated preliminary hearing and does not refer to the first scheduled hearing for Defendant Irwin which was to be on December 4, 2002.) In its Concise Statement of Matters Complained of on Appeal in Paragraph B(e), the Commonwealth alleges error on the part of the Court in failing to appoint stand-by counsel for a preliminary hearing. There is no testimony that the Warren County Public Defender's Office has a sufficient number of attorneys employed so as to be able to assign attorneys to stand by at preliminary hearings on the slight chance that one may be needed. The record shows that at the time that the first preliminary hearing was scheduled, each defendant had an attorney appointed to represent him/her. The conflict of interest became evident

only later when the Court-appointed individual defense counsel for Defendant Keefer became employed in the Public Defender's office and attended the hearing without being aware that the conflict could create a problem in that a Public Defender, Mark Turbessi, Esquire, was representing Defendant Irwin. (Tr. at 37-38) Elizabeth Feronti, the Assistant District Attorney representing the Commonwealth at the preliminary hearing, is rather sure that she did not suggest that Defendant Keefer proceed without counsel or that he waive the conflict and permit Attorney Bonavita to represent him. (Tr. at 88-89) Attorney Bonavita was present and prepared. Any possible prejudice to the defendant could have been remedied later in the Court of Common Pleas where the Defendant or his substitute counsel could move for a remand to the District Justice for a new preliminary hearing or could file a motion for habeas corpus. Also, nothing actually prevented the Commonwealth from proceeding with the preliminary hearing for Defendant Irwin whose attorney from the Public Defender's Office was assigned and would not change. The substitution of an attorney clearly would be only in the case of Defendant Keefer. In light of Ms. Feronti's firm determination that all the preliminary hearings be consolidated, a waiver would have been appropriate, but it was not considered. Also, in her allegation that the trial court delayed the preliminary hearing by not agreeing to have stand-by counsel available, the Commonwealth is attributing the delay to the Court. The law in Pennsylvania is clear that delays by the court are to be attributed to the Commonwealth and are not excludable. *See Aaron*, 804 A.2d 39.

The Commonwealth persists in its allegations regarding the Court's error in not providing stand-by counsel when it states that the Court erred by failing to exclude the period of time from January 27, 2003 to March 19, 2003. (Paragraph B(f) Concise Statement of Matters Complained of on Appeal). The discussion set forth above in response to the Commonwealth's allegations in Paragraph B(e) are pertinent also on this issue. In addition, there was no need for the Commonwealth to accept the delay from

January 27, 2003 to March 19, 2003 for a rescheduled preliminary hearing. Because of the Commonwealth's duty of due diligence to each separate defendant, if it could not arrange a consolidated preliminary hearing, it could have scheduled separate preliminary hearings to accommodate the various defendants and their counsel. In fact, the District Justice testified that she could have set an earlier date for which only one of the defendant's counsel could not be present, that is Joan Fairchild, Esquire for Defendant Mineard. (Tr. at 96) Because of the Commonwealth's demand that all hearings be scheduled together, the District Justice could not find a date prior to March 19, 2003 which accommodated everyone. It should also be noted that although the Assistant District Attorney argued that her reason for consolidation was to prevent victims from making numerous trips to Warren County to testify (Tr. at 27:24; 32:9), she did not have any of the victims present to testify at either scheduled preliminary hearing (Tr. at 56:6-57:4). Nevertheless, if any delay was due to the actions of any court, including that of a District Justice, that period of delay is attributable to the Commonwealth. *See Aaron*, 809 A.2d 39.

The Commonwealth's contention as to delays caused by the schedule of the Court of Common Pleas and by the time taken by the Court to rule on a Motion for Consolidation as contained in Paragraph B(g)(h)(i) and Paragraph C of Commonwealth's Concise Statement of Matters Complained of on Appeal all disregard the clear holding of the Superior Court in *Comm. v. Aaron*. The Court in *Aaron* stated that "the record of the hearing on Appellant's Motion to Dismiss the charges indicates that the Commonwealth made no request to schedule Appellant's case prior to the Rule 1100 run date." In the instant case, there is no evidence that the Commonwealth filed a motion for an arraignment date other than on the regular arraignment day which had been scheduled on the Court calendar prior to the commencement of the calendar year. Rule 300 of the Local Rules of Court for Warren/Forest Counties references that the arraignment "shall be the first available arraignment date at least 20 days after the preliminary

hearing is held or waived." Rule L300(1)(a) The Commonwealth could have complied with said Rule, by requesting an arraignment for the five defendants involved at anytime after April 8, 2003. The next scheduled jury selection date was July 14, 2003 (Tr. at 104: 21) and there is no minimum number of days that are required to separate the date for arraignment from the date for the settlement conference. Rule L300(1)(b) (There is a maximum number of days requiring that a settlement conference be held not later than 45 days after the arraignment.) If the Commonwealth had moved for a special arraignment and settlement conference, the case could have been ready for calendar call on June 30, 2003 and trial on July 14, 2003. The Commonwealth did not take any action to accelerate the usual court schedule. The holding of *Comm. v. Aaron* resolved any questions of delays created by a pre-set court schedule.

For the foregoing reasons, this Court entered its Order of June 27, 2003. No further Opinion shall issue.

BY THE COURT

WILLIAM F. MORGAN, J.